IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 180 of 1997

For Approval and Signature:
HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAVINDRA KRISHNA RAO KATHIAWAD DIWANJI - Petitioner(s)

Versus

DECD. LAXMANSINH BHAUSAHEB GAEKWAD & 4 - Respondent(s)

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Appearance :
MR KB BINIWALE for MR SP HASURKAR for Petitioner No(s).: 1.
MR NK MAJMUDAR for Respondent No(s).: 1, 2, 3, 4,5.
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date : 27/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 8th October, 1996 passed by the learned Assistant Judge, Vadodara in Regular Civil Appeal No.452/1983, the respondent (defendant in Rent Suit No.67/1979) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, **"the Rent**

Act").

The respondents-plaintiffs are the owners of the house “Leela Sadan” situated at Siddhnath Road, Vadodara. Rooms in the northern side of the said house were leased to the defendant for a monthly rent of Rs.125=00. The plaintiffs instituted Rent Suit No.67/1979 for recovery of possession of the suit premises and the amount of arrears of rent in the Court of Small Causes, Vadodara. According to the plaintiffs the property “Leela Sadan” was joint family property of the plaintiff no.1 and his brother Jashwantsingh Gaekwad. The said property was partitioned between the two brothers in the year 1964. The mutation entry in the revenue record was made in the year 1974. The suit premises came to the share of the plaintiffs. The plaintiffs had thus become exclusive owners of the suit premises. The defendant was in arrears of rent since 1st November, 1972 and that he was not ready and willing to pay the rent. The plaintiffs also claimed that the plaintiffs required the suit premises reasonably and bonafide for their personal use. The suit was contested by the defendant vide written statement Exh.13. According to the defendant, the defendant was not aware of the partition amongst the brothers and that the other

brother Jashwantsingh had instituted Small Civil Suit No.1462/1975 for recovery of possession of the suit premises from the defendant; that the said suit was instituted by Jashwantsingh as the sole owner of the suit premises. The claim for recovery of possession made in the said suit was dismissed on 16th July, 1976. The Civil Appeal No.210/1976 preferred by the said Jashwantsingh was also dismissed on 31st January, 1978. The plaintiffs had given notice of attornment on 22nd July, 1978 (Exh.27). The plaintiffs, therefore, were not entitled to recover the rent prior to 22nd July, 1978. The learned trial Judge, by judgment and order dated 30th November, 1983, held that the plaintiffs were not entitled to recover rent prior to 22nd July, 1978 and that the defendant had paid up all rent due from July, 1978 till the date of the decree. The defendant was, therefore, not a tenant in default. The suit was accordingly dismissed.

Feeling aggrieved, the plaintiffs preferred Regular Civil Appeal No.452/1983 in the Court of learned District Judge, Vadodara. The learned Assistant Judge, by impugned judgment and order dated 8th October, 1996, held that the defendant was required to show his bonafide by depositing the amount of rent due on the first day of hearing of the

suit. The phrase “the rent then due” occurring in Section 12(3)(b) of the Rent Act would include the time-barred dues also. Besides, by order dated 16th March, 1981 made under Section 11(3) of the Rent Act below application Exh.16, the trial Court had directed the defendant to deposit a sum of Rs.3,087=00 in the Court on or before 30th March, 1981 and **“to go on depositing future rent @ Rs.125=00 per month regularly every month in the Court by the tenth day of every month beginning from April, 1981.”** The defendant had failed to comply with the said direction in as much as the defendant did not deposit Rs.3,087=00 on or before 30th March, 1981 as directed nor did he continue to deposit mesne profits of Rs.125=00 every month. It was found that the defendant had deposited a sum of Rs.6,000=00 on 11th April, 1980 as against the rent of Rs.12,625=00 then due. Pending the Appeal also the defendant did not deposit the rent in the Court regularly every month. The defendant was a tenant in default and was not ready and willing to pay the rent. The lower appellate Court accordingly allowed the Appeal and passed decree for eviction against the defendant. Therefore, the present Revision Application.

The facts stated hereinabove are not disputed. It is

not in dispute that the property “Leela Sadan” was a joint property of two brothers and it was partitioned amongst them as alleged. It is also not in dispute that the defendant was in arrears of rent since 1st November, 1972. It is true that the brother of the defendant Jashwantsingh had instituted suit for recovery of possession of the suit premises and the amount of rent due as aforesaid. However, it is not true that the said suit was instituted by the said Jashwantsingh Gaekwad as an exclusive owner of the suit premises. It is also not in dispute that prior to the partition between the two brothers the property was a joint family property. The trial Court had, therefore, clearly erred in holding that prior to July, 1978 the plaintiff was not the owner of the suit premises and the plaintiff had no right to recover rent prior to July, 1978. The lower appellate Court has rightly held that to earn protection conferred by Section 12(3)(b) of the Rent Act the defendant was required to deposit the amount of rent due including the time-barred claim in the Court on the first day of hearing. Besides, the defendant was also bound to comply with the directions issued by the trial Court under Section 11(3) of the Rent Act. The defendant having failed to pay the amount of rent then due on or before

the first day of hearing; and having failed to pay the rent regularly every month pending the suit; and having failed to comply with the aforesaid directions issued under Section 11(3) of the Rent Act had undoubtedly forfeited the right to protection conferred by Section 12(3)(b) of the Rent Act. On perusal of the statement (p.69) it is apparent that pending the Appeal also the defendant did not deposit the rent regularly. Instead, he deposited a lump-sum amount of Rs.1,500=00 (rent for 12 months) on 15th February, 1985 and Rs.4,000=00 (rent for 32 months) on 8th August, 1988. Thereafter also he made deposits intermittently. Thus, the defendant failed to comply with the conditions mentioned in Section 12(3)(b) of the Rent Act. The plaintiff was, therefore, entitled to a decree for eviction.

Further, by order dated 4th February, 1997 (Coram: M.S.Parikh, J.) the Revision Application was admitted to final hearing. The Court was pleased to grant ad-interim stay on usual terms and conditions. It is admitted that the usual terms and conditions include deposit of rent regularly every month. Mr.Majmudar, upon instructions received from the plaintiffs, states that the defendant has not made the deposit in the trial Court as directed.

He has submitted that the only deposits that the defendant made pending this Revision Application is a sum of Rs.4,500=00 deposited in the year 2001 and a sum of Rs.125=00 deposited on 28th June, 2005. Mr.Biniwale has no instruction to controvert the above statement.

In view of the above discussion the Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

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